

1 Irwin B. Schwartz (Cal. Bar No. 141140)
2 ischwartz@blaschwartz.com

3 BLA Schwartz, P.C.
4 515 S. Flower Street 18th Floor
5 Los Angeles, California 90071
6 Phone: 213-785-3683
7 Fax: 213-785-3684

8 *Counsel for California State Teachers Retirement System;*
9 *New York State Common Retirement Fund;*
10 *Teachers Retirement System of Texas;*
11 *Pension Reserves Investment Management Board of Massachusetts;*
12 *38 Securities Claimants owned or managed by entities*
13 *associated with The Hartford*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- Affects PG&E Corporation
- Affects Pacific Gas and Electric Company
- Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

Case No. 19-30088 (DM) (Lead Case)
(Jointly Administered)

Chapter 11

**JOINDER IN THE SECURITIES
PLAINTIFFS' MOTION FOR
APPLICATION OF BANKRUPTCY
RULE 7023**

Hearing Information:

Date: August 8, 2023
Time: 10:00 a.m. (Pacific Time)
Place: (Phone/Videoconference Only)
United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

INTRODUCTION

The California State Teachers Retirement System (“CalSTRS”), the New York State Comptroller, as Administrative Head of the New York State Local Retirement System and Trustee of the New York State Common Retirement Fund (“NYSCRF”), the Teacher Retirement System of Texas (“Texas TRS”); the Pension Reserves Investment Management Board of Massachusetts (“Mass PRIM”) and the Hartford Accounts¹ (together, the “BLA Schwartz Clients”) hereby respectfully join in support of the Securities Plaintiffs’ Motion and Memorandum of Points and Authorities In Support Of Motion for the Application of Bankruptcy Rule 7023 and the Certification of a Class of Securities Claimants (the “Rule 7023 Motion”) [Dkt. No. 13865].

While the Securities Procedures [Dkt. No. 10015-01]² were well intentioned to efficiently resolve thousands of expected Securities Claims, in practice they have been inefficient and unfair, used by Debtors to divide and conquer Securities Claimants through omnibus objections and low-ball settlement offers. For those Securities Claimants that remain, including the BLA Schwartz Clients, Debtors evidently intend to impose additional pleading burdens and motion practice that will ramp up costs to the Securities Claimants holding claims of undetermined value with no end in sight. Indeed, under the Court’s most recent order that requires objections by August 30, 2023 [Dkt. No. 13849], Debtors evidently intend to file sufficiency objections to each of the remaining proofs of claims, which could be as many as 4000, leading to an undetermined number of briefing schedules for those that are able to defend their proofs of claim, but imposing more costs under

¹ The Hartford Accounts are 38 Securities Claimants owned or managed by entities associated with The Hartford, a Connecticut-based financial services company. A list of the applicable claim numbers for each of the Hartford Accounts, CalSTRS, NYSCRF, Texas TRS and Mass PRIM is attached hereto as Appendix A.

² We adopt the defined terms in the Securities Procedures and the Rule 7023 Motion.

1 what was supposed to be a streamlined, inexpensive process. For those that do not have resources
2 to protect their claims or are simply unaware of the process, the Debtors will likely seek blanket
3 dismissals akin to the Twenty-Second Securities Claims Omnibus Objection [Dkt. No. 13781].

4 That could not have been the Court's intent in adopting the Securities Procedures. Indeed,
5 as the Court noted at the end of the June 7, 2023, hearing, it is not the Court's intent to impose
6 more burdens on the Securities Claimants, especially for doing only what was required of them in
7 filing the proof of claim forms and twice submitting trading data. The Rule 7023 Motion,
8 although not perfect, offers a better way. As discussed more fully below, the BLA Schwartz
9 Clients respectfully urge the Court to recognize that a collective adjudication process under Fed.
10 R. Bankr. P. 7023 is a superior process to resolve the myriad legal and factual issues that arise
11 from Debtors' expected *en masse* objections to potentially contested matters as to the outstanding
12 proofs of claim. The BLA Schwartz Clients respectfully request that the Court grant the Rule
13 7023 Motion, permit the Securities Plaintiffs to file a unified complaint on behalf of all class
14 members that filed proofs of claim, require Debtors to make their objections thirty days
15 thereafter, and then resolve the sufficiency, discovery and merits issues on a collective basis
16 without burdening the Court, each and every Securities Claimant and the Debtors with hundreds,
17 if not thousands, of contested matters. *See In re Mortgage & Realty Trust*, 125 B.R. 575, 581 (C.
18 D. Cal. 1991) (Rule 7023 motion allowed).

22 **ARGUMENT**

23 **I. COLLECTIVE RESOLUTION IS THE BEST WAY TO ADJUDICATE DEBTORS' OBJECTIONS**

24 The Securities Procedures have taken too long, have led to unintended consequences, and
25 accomplished too little. Accordingly, the Court set an objection deadline for August 30, 2023,
26 notwithstanding the Debtors' failure. Order Further Extending Deadline for the Reorganized
27 Debtors to Object to Claims and Granting Related Relief [Dkt. No 13849]. Left undecided was
28

1 how to efficiently resolve the expected sufficiency objections to approximately 4000 pending
2 Securities Claimants' proofs of claim. While a small group of Securities Claimants' counsel, the
3 undersigned included, negotiated with Debtors' counsel over protocols for resolution of the
4 expected objections to their clients' proofs of claim, the Rule 7023 Motion filed during the
5 pendency of those negotiations provides the Court with a better, comprehensive solution, that will
6 protect the due process rights of all Securities Claimants, including the BLA Schwartz Clients.³
7 Nothing in the Rule 7023 Motion displaces the Securities Procedures' settlement and ADR
8 processes, but it offers an efficient alternative to the Debtors' expressed intent to "move to
9 dismiss" all the outstanding proofs of claim, the inevitable procedural and merits challenges
10 involved in those objections, coordinating whatever discovery follows thereafter, and the
11 corresponding merits resolutions, which could number in the hundreds if not thousands.
12

13 II. RULE 7023 IS INTENDED TO BE USED IN THIS KIND OF CASE

14 Fed. R. Bankr. P. 7023 incorporates, without change, Rule 23 of the Federal Rules of Civil
15 Procedure, making it applicable in adversary proceedings. Fed. R. Bankr. P. 9014 gives the court
16 discretion to apply Rule 7023 to a contested matter. *In re American Reserve Corp.*, 840 F.2d 487,
17 488 (7th Cir. 1988) (class proofs of claim for contested matters permissible within bankruptcy
18 court's discretion). The application of a bankruptcy court's discretion removes the possibility of
19 abuse and allows the bankruptcy court to review each case on its particular facts. *Matter of Ret.*
20 *Builders, Inc.*, 96 B.R. 390, 391-92 (Bankr. S.D. Fla. 1988).
21

22 Under the traditional Rule 23 factors, the Rule 7023 Motion should be allowed. As of the
23 Court's August 30, 2023, deadline Debtors must assert sufficiency objections as to all the
24
25

26
27 ³ Following the June 7, 2023 hearing, Debtors' counsel and counsel for the "Objectors" that opposed the
28 Motion for Entry of Order Further Extending the Reorganized Debtors to Object to Claims and for Related Relief
[Doc. No. 13745] engaged in discussions as to a proposed protocol for handling the Objectors' proofs of claims, but
none of the others.

1 unresolved proofs of claim, subjecting each of the Securities Claimants to having to defend its
2 proof of claim and forcing the Court to resolve up to 4000 objections, with associated discovery
3 and potentially separate trials; there can be no dispute that the requisite numerosity exists here.
4 Likewise, there can be no dispute that there are common issues of fact and law with respect to
5 each of the Securities Claimants, the resolution of which on a collective basis will be more
6 efficient for the Court, Debtors and the Securities Claimants. The Rule 7023 Motion sets forth a
7 compelling list of common issues of law and fact, particularly with respect to the expected class-
8 wide sufficiency objections. [Dkt. No. 13865 at 12 & n.7]. As discussed below, the Securities
9 Plaintiffs and their counsel will adequately and fairly represent the proposed bankruptcy classes.
10

11 In addition to these factors, a bankruptcy court determining whether to exercise discretion
12 to appoint a class representative for contested matters may consider:

- 13 • (1) whether the class was certified pre-petition;
- 14 • (2) whether the members of the putative class received notice of the bar date; and
- 15 • (3) whether class certification will adversely affect the administration of the estate.

16
17 *In re Chaparral Energy, Inc.*, 571 B.R. 642, 646 (Bankr. D. Del. 2017). All these factors also
18 weigh in favor of the Rule 7023 Motion. Indeed, prior to the Debtors' bankruptcy petition, the
19 Securities Action had already been filed as a putative class action for the benefit of investors in
20 PG&E, the Securities Plaintiffs had been appointed as putative class representatives, and their
21 counsel appointed putative class counsel. [Dkt. No. 13865 at 6:22-7:7]. The BLA Schwartz
22 Clients know of no dispute that the Securities Plaintiffs filed their proofs of claim ahead of the bar
23 date or that they will be inadequate representatives of the proposed classes, subject to the
24 discussion in Section III below. There is no plausible argument that the Rule 7023 Motion will
25 adversely affect the administration of the Debtors' estate.
26

27 Most importantly, however, is the undisputed fact that the Securities Procedures did not
28

1 work as the Court intended. In *In re Think Fin, LLC*, 2018 WL 9801454 (Bankr. N.D. Tex.
2 2018), the court considered a motion under Fed. R. Bankr. P. 7023 to certify a class of alleged
3 victims of an illegal payday lending scheme. Noting that there was insufficient time for the class
4 to be certified pre-petition, as here, the court then examined the second factor of adequate notice.
5 *Id.* at *4. The *Think Finance* court noted that there was extensive and effective distribution of the
6 court-approved notice to potential creditors, similar to what the Court approved here. However,
7 in retrospect, the *Think Finance* court observed that “while the Notice Procedures may have been
8 constitutionally sufficient, they were not successful in facilitating creditor participation. *Id.* at *2,
9 *5 (5000 proofs of claim were filed out of 1.13 million borrowers). Ultimately, the *Think*
10 *Finance* court noted that, even under the court-approved notice procedures, there was substantial
11 risk of prejudice to the putative class members that filed proof of claim forms:

12 even the consumer borrowers who filed proofs of claim are not guaranteed recoveries
13 because they may not have properly articulated the basis for their claims or may not be
14 equipped or incentivized to defend their proofs of claim. Filing a claim may have been
15 relatively easy for consumer borrowers who were familiar with their causes of action, but
16 defending against an objection could be significantly more difficult and costly.

17 *Id.* at *5. After finding no significant adverse impact on the administration of the estate, the
18 *Think Finance* court ordered that Fed. R. Bankr. P. 7023 would apply to the proofs of claim
19 submitted by the putative class representatives. *Id.* at *6-*7. *See also In re Kaiser Grp. Int’l,*
20 *Inc.*, 278 B.R. 58, 67 (Bankr. D. Del. 2002) (no better way to resolve claims of 47 shareholders).

21 For the same reasons, this Court should adopt Fed. R. Bankr. P. 7023 class resolution
22 here. While the Debtors’ notice was extensive and thousands of Securities Claimants submitted
23 proofs of claim and associated trading data, the implementation of the Securities Procedures has
24 led to unintended and burdensome consequences. Here, (i) the proof of claims forms provided no
25 guidance in how to calculate claim value, (ii) the data submission process was difficult and
26 cumbersome leading to mistaken duplicate and omitted claims, (iii) and the claims settlement
27
28

1 process has been slow or non-existent, and (iv) evidently numerous Securities Claimants have not
2 responded to the Debtors' settlement offers as set forth in the Debtors' Twenty-Second Securities
3 Claims Omnibus Objection. [Dkt. No. 13871 at 3:13-4:11]. This could not have been what the
4 Court intended in approving the Securities Procedures.

5
6 The BLA Schwartz Clients respectfully contend that the benefits to the Court and the
7 Securities Claimants of collective resolution of the common issues of law and fact arising from
8 the Securities Claimants' proofs of claim under Fed. R. Bankr. P. 7023 greatly outweigh any
9 perceived burdens associated with Debtors failing to complete the Securities Procedures after
10 almost three years, especially given the Court has required objections by August 30, 2023. [Dkt.
11 No. 13849]. Moreover, nothing in the Rule 7023 Motion precludes the Debtors from continuing
12 to make settlement offers and engaging in ADR procedures with individual Securities Claimants.

13
14 III. THE COURT CAN MITIGATE ANY THEORETICAL CONFLICT OF INTEREST

15 The BLA Schwartz clients agree with the Rule 7023 Motion that the Securities Plaintiffs
16 will adequately represent the class of Securities Claimants and that their counsel are well suited to
17 defend the legal sufficiency of the proof of claim form, engage in discovery, and prosecute the
18 Securities Claims on behalf of the Securities Claimants as a class. Indeed, the Securities
19 Plaintiffs' counsel authored the Third Amended Complaint in the Securities Action, which
20 Debtors held up as the intended basis for their attack on the sufficiency of the proofs of claim.
21 The Securities Plaintiffs and their counsel are perhaps uniquely suited to run the collective
22 resolution of the common issues of fact and law arising from such a sufficiency objection.

23
24 The BLA Schwartz Clients acknowledge that the proposed bankruptcy class is a subset of
25 the putative class in the Securities Action as to which the Securities Plaintiffs already owe
26 fiduciary duties. If Debtors later propose a global settlement, a theoretical conflict may arise as to
27 the appropriate allocation between the class of Securities Claimants here and the putative class in
28

1 the Securities Action. Nevertheless, these potential theoretical conflicts are not disabling because
2 the Court can implement procedures under Fed. R. Civ. P. 23 to protect the rights of all parties.
3 To that end, the Court should require the Securities Plaintiffs and Debtors to provide notice to the
4 Court and Securities Claimants of any global settlement negotiations, including mediation,
5 involving the claims in the Securities Action. At that juncture, this Court has discretion to
6 appoint a representative of the Securities Claimants sub-classes to protect their interests as to
7 issues as to which a conflict arises. Fed. R. Civ. P. 23(c)(5). In addition, as provided in Fed. R.
8 Civ. P. 23(e)(4), the Court may allow bankruptcy class members the right to exclude themselves
9 from the settlement.
10

11 CONCLUSION

12 For the foregoing reasons and the reasons set forth in the Securities Plaintiffs' Motion and
13 Memorandum of Points and Authorities in Support of Motion for the Application of Bankruptcy
14 Rule 7023 and the Certification of a Class of Securities Claimants, the BLA Schwartz Clients join
15 in support of the Rule 7023 Motion.
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESERVATION OF RIGHTS

The BLA Schwartz Clients reserve all their respective rights, claims, defenses and remedies, including without limitation, the right to amend, modify, or supplement this Joinder in accordance with the applicable rules.

Dated: July 18, 2023

Respectfully Submitted,

BLA Schwartz, P.C.

/s/ Irwin B. Schwartz

Irwin B. Schwartz (Cal. Bar No. 141140)

ischwartz@blaschwartz.com

BLA Schwartz, P.C.

515 S. Flower Street, 18th Floor

Los Angeles, California 90071

Phone: 213-785-3683

Fax: 213-785-3684

*Counsel for CalSTRS, NYSCRF, Texas TRS,
Mass. PRIM, and the Hartford Accounts*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Bankruptcy Court for the Northern District of California by using CM/ECF system on July 18, 2023. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on July 18, 2023.

/s/ Irwin B. Schwartz
Irwin B. Schwartz

Appendix A

Hartford, HIMCO, & Hartford-associated entity claims by Case.	
30088 (PG&E)	30089 (Pacific Gas and Electric)
100853	108501
108500	101963
101156	100313
108142	108396
108394	108404
108405	101182
100755	101917
102076	101981
100767	100877
108147	108143
100957	100939
100864	100916
108146	108144
108149	108145
108152	108148
108151	108150
108154	108160
108157	108153
108156	108158
108155	108162
108159	108163
101294	101264
101960	101161
102081	101383

Hartford, HIMCO, & Hartford-associated entity claims by Case.	
30088 (PG&E)	30089 (Pacific Gas and Electric)
102076	101189
101281	101204
102029	101225
101192	101165
100960	101781
	101161
	101964
	101227
	102109
	101993
	101264
	101168
	102015
	108161

For NYSCRF, CalSTRS, PRIM and Texas TRS (and excluding withdrawn claims)

Client	30088 (PG&E)	30089 (Pacific Gas and Electric)
New York State Common Retirement Fund	99987	
California State Teachers Retirement System	101135	101178
Pension Reserves Investment Board of Massachusetts	101139	101131
Teachers Retirement System of Texas	100890	